

walks, driveways, curbs or gutters in connection with the erection of buildings in the city.
(Code 1968, § 41-98)

Sec. 40-99. Violations.

Any person constructing, reconstructing, repairing or regrading any sidewalk, driveway, curb or gutter who shall fail first to give the bond required by section 40-95 of this Code, or who shall construct, reconstruct or repair any sidewalk, driveway, curb or gutter without obtaining from the city engineer the line and grade therefor, or who shall construct any sidewalk, driveway, curb or gutter on any other line and grade than that given by the city engineer, or without obtaining a permit therefor, or who shall fail to construct, reconstruct, repair or regrade any sidewalk, driveway, curb or gutter after notice so to do, or who shall violate any other provision of this article, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined as provided in section 1-6 of this Code.

(Code 1968, § 41-99; Ord. No. 90-635, § 110, 5-23-90)

Secs. 40-100—40-109. Reserved.

ARTICLE IV. STREET OILING PERMIT

Sec. 40-110. Required.

It shall be unlawful for any person to oil or allow the oiling of any public street, highway, or alleyway within the city, without having applied for and obtained a street oiling permit from the director of public works and engineering or his designee ("the director").

(Code 1968, § 41-110; Ord. No. 90-635, § 114, 5-23-90; Ord. No. 93-514, § 79, 5-5-93)

Sec. 40-111. Information to be furnished by applicant.

Applicants for a permit required by this article shall furnish, on forms to be furnished by the director, the following information:

- (1) Which portions of which streets, highways or alleyways are proposed to be oiled.

- (2) The name, business address and business telephone number of the contractor who is to perform the street oiling.

- (3) The description, by specification, of the materials to be used.

- (4) The method of application to be used.

- (5) The date of the proposed work is to commence.

- (6) Such other information as the director may require.

(Code 1968, § 41-111; Ord. No. 90-635, § 114, 5-23-90)

Sec. 40-112. Bond to be furnished by applicant.

Each applicant for a street oiling permit must furnish, on forms to be provided by the director, a bond executed by the contractor who is to perform the street oiling and by one corporate surety, which surety shall be a corporation qualified and licensed by the board of insurance commissioners of the state, in the amount of \$10,000.00, which bond shall provide and be conditioned that the principal and surety will be primarily liable for its negligent and wrongful acts and will further indemnify and save harmless the city and its officers from any and all demands, claims, or liability, regardless of by whom claimed, arising out of or in any manner incident to the doing of any work pursuant to or under the terms of any permit issued, during the coverage period of the bond, and assumes all liability for any and all acts relating to the performance of the oiling of any street. A single recovery shall not exhaust such bond, but the same shall remain in full force and effect until the whole amount thereof has been recovered, or until the bond has terminated in accordance with the following provision. Such bond shall terminate at midnight on December thirty-first of the same year in which it shall have been executed; provided, that such termination shall not discharge or release the principal obligor and the surety from the payment of claims and the liability therefor based upon breach of the conditions of the bond occurring prior to the termination thereof. Each such bond shall be accompanied by an appropriate power of attorney

evidencing the authority of the issuing agent or attorney to execute the bond for the corporate surety.

(Code 1968, § 41-112; Ord. No. 90-635, § 114, 5-23-90)

Sec. 40-113. Denial.

The director shall deny any application for a street oiling permit if the proposed street oiling would interfere with, hinder or adversely affect any project of the city or result in damage to any city-owned property. The director shall deny any such application if the material to be used is anything other than used lubricating oil, or if the method of application to be used is any method other than at least two applications evenly distributed, totaling a minimum of three-fourths of one gallon per square yard. The director shall deny any such application if all of the information requested on the application form is not accurately and truthfully given, or if the required bond is not furnished, or if the bond furnished does not meet the requirements of this article.

(Code 1968, § 41-113; Ord. No. 90-635, § 114, 5-23-90)

Sec. 40-114. Expiration; not transferable.

All street oiling permits will expire and be null and void at the end of 90 days after the date of issuance. All street oiling permits shall be non-transferable.

(Code 1968, § 41-114)

Sec. 40-115. Penalty.

Each person violating any provision of this article shall, upon conviction, be punished as provided by section 1-6 of this Code. Each day in which this article is violated shall be considered a separate offense.

(Code 1968, § 41-115; Ord. No. 92-1449, § 56, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Secs. 40-116—40-120. Reserved.

ARTICLE V. EXCAVATION IN PUBLIC WAY*

DIVISION 1. GENERALLY

Sec. 40-121. Definitions.

As used in this article, the following terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

Applicant means any person who seeks a permit for an excavation.

Backfill means excavation fill material meeting city specified quality requirements or the placement thereof.

Construction standards means the City of Houston Standard Specifications for Wastewater Collection Systems, Water Lines, Storm Drainage, and Street Paving and the City of Houston Standard Construction Details for Wastewater Collection Systems, Water Lines, Storm Drainage, and Street Paving as they may be amended from time to time by the department of public works and engineering and approved by the city engineer.

Emergency means an unforeseeable event or occurrence that endangers health, life, or property, or a situation in which public need for uninterrupted utility service requires immediate corrective action to restore services.

Excavation means an activity that cuts, penetrates, or bores under any portion of the public way that has been improved with a paved surface for street, sidewalk, surface drainage, or related public transportation infrastructure purposes. The term includes but is not limited to cutting, tunneling, jacking and boring, backfilling, restoring, repairing, and installing and maintaining a temporary surface in, the public way. The term does not include a transportation improvement; however, it does include excavations that are under-

***Editor's note**—Ord. No. 00-1115, § 2, adopted Dec. 20, 2000, amended Art. V in its entirety. Formerly said article pertained to similar subject matter and derived from Code 1968, §§ 41-127—41-157. See the Code Comparative Table.

Cross references—Open or uncovered wells, cisterns, excavations, etc., § 28-11; erection of detour or barricade signs, § 45-118 et seq.; driving on fresh pavement, § 45-42.

taken for the improvement or maintenance of publicly owned utility systems, such as water and wastewater lines and facilities. The term also does not include utility maintenance or other activities that are performed within already existing structures, vaults, conduits, or cable ways that are located underneath street improvements, provided that any access required for the work is obtained through manholes, or other previously constructed entrances that may be utilized without cutting or penetrating any pavement or other street improvement.

Facility means any structure, device, or other thing whatsoever that may be installed or maintained in, on, within, under, over, or above a public way by an excavation.

Inspection means the inspection of an excavation by any person approved by the city engineer to determine compliance with this article.

Owner means a person, including the city, who is the owner or will, following the completion of the installation, become the owner of any facility that is installed or is proposed to be installed or maintained in the public way.

Permit means a current and valid authorization issued under division 2 of this article.

Permittee means a person who holds a permit; the singular term includes the plural if two or more persons jointly hold the permit, where applicable.

Public way means any public street right-of-way located in the city, including the entire area between the boundary lines of every way (including but not limited to roads, streets, alleys, highways, boulevards, bridges, tunnels, or similar thoroughfares), whether acquired by purchase, grant, or dedication and acceptance by the city or by the public, that has been opened to the use of the public for purposes of vehicular travel.

Public way construction entity means the City of Houston, the Metropolitan Transit Authority of Harris County, Texas, the Texas Department of Transportation, Harris County, Harris County Flood Control District, or any other public entity

performing or causing to be performed transportation improvement construction or construction-related activities in public ways.

Traffic-control device means a traffic sign, signal, or marking that is placed and maintained in accordance with state law and this Code.

Transportation improvement means the portion of work within the finished paved surface of a public way undertaken by or pursuant to contract for the state or a political subdivision of the state for the purpose of improving or maintaining public way transportation and related storm drainage and street lighting infrastructure, but does not include any activity, such as connection to other facilities, that cuts, penetrates, or bores under a public way other than the one being improved or maintained pursuant to the contract or that cuts, penetrates or bores under the public way after installation of new paving.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 01-203, § 2, 2-28-01; Ord. No. 06-595, § 2, 6-7-06)

Sec. 40-122. Prohibited activities.

(a) It shall be unlawful for any person to excavate or cause an excavation within the city unless the person is a permittee to whom a permit has been issued for the excavation pursuant to this article.

(b) It shall be unlawful for a permittee to excavate or cause an excavation within the city in violation of any term of a permit issued pursuant to this article.

(c) It shall be unlawful for any permittee to fail to exhibit a permit upon request as required by section 40-142 of this Code. In any prosecution under this article, it shall be presumed that there is no permit if the permit is not properly exhibited.

(d) It shall be unlawful for any permittee to fail to restore the public way following excavation as required by this article.

(e) It is an affirmative defense to prosecution under subsections (a) and (c) above that the excavation was begun in response to an emergency and that a permit was timely applied for in compliance with section 40-139 of this Code.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 3, 6-7-06)

Sec. 40-123. Provisions cumulative.

(a) The provisions of this article are cumulative of all other requirements of this Code and other laws, including, without limitation, the Construction Code and the Fire Code, and utility franchises, as well as all applicable state and federal laws and regulations. Compliance with this article does not excuse compliance with any other law, and permittees are additionally required to obtain any other permits, licenses, and authorizations required by law, including but not limited to utility franchises, permits, licenses, and authorizations that are required to be obtained from the city, the Texas Department of Licensing and Regulation, the Texas Public Utility Commission, and the Texas Underground Facility Notification Corporation or any other appropriate governmental agency. However, to the extent that any provision set forth in this article may not be imposed upon any person because its imposition would be inconsistent with a controlling state or federal law, then this article shall be construed and applied in a manner that conforms with the applicable state or federal law. In addition, this article shall not be construed to require an owner to pay any fee that is prohibited by applicable state or federal law or valid city utility franchise.

(b) To the extent that any other city permit or authorization is required for work that is also governed by this article, the director of public works and engineering shall, to the extent practicable, devise consolidated application forms and issue the required permits or authorizations on a combined basis.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 02-399, § 80, 5-15-02; Ord. No. 06-595, § 4, 6-7-06)

Sec. 40-124. Penalty.

Violation of this article is unlawful. Any person who violates any provision of this article shall be guilty of an offense and, upon conviction thereof, shall be punished as provided in section 1-6 of this Code. Each and every day that any violation continues shall constitute a separate offense and shall be punishable as such.

(Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-125. No private rights in public way.

Nothing in this article shall be construed to give any person or permittee any property right in

or to the use of the public way. All permits issued and held under this article shall be subject to the superior right of the public to control the use of the public way and ensure the safe and orderly movement of traffic, and a separate permit shall be required under article XVII of this chapter where applicable to any work that causes an obstruction.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 02-974, § 6, 10-30-02; Ord. No. 04-498, § 4, 5-26-04)

Sec. 40-126. Appeals; hearing.

Any person whose permit is denied or who is otherwise aggrieved by a notice, action, or decision of the city engineer hereunder shall, upon written request, be entitled to a hearing to be conducted by a hearing officer designated by the director of public works and engineering, who shall promulgate rules for hearings. The decision of the hearing officer shall be final. Where time is of the essence, the aggrieved person may so advise and state the reason therefor in the request and, to the extent reasonably warranted and allowed by the circumstances, an expedited hearing of the issue shall be afforded.

(Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-127. Public entities not exempt.

In addition to their application to other persons, the provisions of this article are applicable to excavations made by the city and its contractors, as well as to excavations made by or on behalf of other governmental entities and subdivisions, to the extent of the city's police power jurisdiction. In connection with excavations made by the city, the city engineer may waive compliance with insurance and other requirements that have no practical application as applied to the city.

(Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-128. Rules and regulations.

(a) The director of public works and engineering is authorized to promulgate rules and regulations regarding any aspect of the operation of this article, including without limitation requirements for drawings and specifications, methods by which excavations will be performed, traffic

control procedures, application processing and hearing procedures, debarment procedures, construction management procedures, and inspection procedures. The rules and regulations shall be consistent with applicable federal and state laws, city ordinances, and sound engineering practices, and the City Council Committee on Transportation, Infrastructure and Aviation, or its successor committee, shall conduct a public hearing on the proposed rules and regulations not less than ten days following the publication of notice of intent in a newspaper of general circulation, and the proposed rules and regulations shall be approved by a majority vote of the City Council Committee on Transportation, Infrastructure and Aviation, or its successor committee, prior to implementation. The director of public works and engineering shall make copies of the rules and regulations available for inspection in the director's office, and copies may be purchased at the fees prescribed by law.

(b) Before adopting any rules and regulations under subsection (a) or any substantive amendments thereto, the director of public works and engineering shall publish a notice of intent one time in a newspaper of general circulation and shall afford a ten-day period in which affected persons may obtain a copy of draft proposals and submit written comments thereon.
(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 5, 6-7-06)

Secs. 40-129—40-135. Reserved.

DIVISION 2. PERMITS

Sec. 40-136. Application.

(a) A permit for any excavation shall be obtained by the owner of the facility. If the owner of a facility will not be making the excavation with its own personnel, then the contractor retained to perform the work shall join with the owner as an applicant in obtaining the permit. Where two or more related excavations are being performed as part of the same project, the application and permit may cover the related work, consistent with the regulations issued under section 40-128 of this Code.

(b) Applications for permits shall be in the form prescribed by the director, who may provide for the filing and processing of applications by electronic means. Each application shall be submitted to the city engineer, shall be signed and sworn to before an officer authorized to administer oaths by each applicant and shall include the following:

- (1) The name, assumed name, or business name, business type (corporation, partnership, individual/sole proprietor or other) of each applicant;
- (2) Each applicant's mailing address (and street address if different), telephone number, facsimile number, and e-mail address;
- (3) The location (including key map number), depth, length, and width of each excavation to be made in each block and/or intersection, which may alternatively be set forth on the provided drawings and specifications;
- (4) The purpose of the excavation, including a description of the facilities to be installed, maintained, and/or repaired;
- (5) The method of excavation;
- (6) The proposed excavation start date and duration;
- (7) A statement that each person executing the application is fully authorized to act on behalf of and bind his principal in executing and filing the application;
- (8) A statement that each applicant accepts and obligates itself to the following release and indemnification provisions:

'RELEASE

PERMITTEE AGREES TO AND SHALL RELEASE THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UN-

DER THE PERMIT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE CITY'S ACTUAL OR ALLEGED JOINT OR CONCURRENT NEGLIGENCE AND/OR THE CITY'S STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY.

INDEMNIFICATION

PERMITTEE AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") HARMLESS FOR ALL CLAIMS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS PERMIT, INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY:

- (i) PERMITTEE'S AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', PRINCIPALS', OR SUBCONTRACTORS OF PERMITTEES' (COLLECTIVELY IN NUMBERED PARAGRAPHS (i)—(iii), "PERMITTEE") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS;
- (ii) THE CITY'S AND PERMITTEE'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER PERMITTEE IS IMMUNE FROM LIABILITY OR NOT; AND
- (iii) THE CITY'S AND PERMITTEE'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER PERMITTEE IS IMMUNE FROM LIABILITY OR NOT.

PERMITTEE SHALL DEFEND, INDEMNIFY, AND HOLD THE CITY HARM-

LESS DURING THE TERM OF THE PERMIT AND FOR FOUR YEARS AFTER THE PERMIT TERMINATES.

WHERE APPLICABLE, THE PROVISIONS OF SECTION 283.057 OF THE TEXAS LOCAL GOVERNMENT CODE SHALL CONTROL IN LIEU OF THE FOREGOING; ADDITIONALLY, TO THE EXTENT THAT THE APPLICANT HOLDS A CURRENT AND VALID UTILITY FRANCHISE FROM THE CITY, THE RELEASE AND INDEMNIFICATION PROVISIONS OF THE FRANCHISE SHALL CONTROL IN LIEU OF THE FOREGOING.'

- (9) The name of the owner of the facility;
- (10) The 24-hour telephone number at which each applicant's representative who will respond to emergencies may be contacted;
- (11) The name, mailing address, telephone number, facsimile number, and e-mail address of a person who is authorized to receive all notices authorized to be given by the city under this article to each applicant;
- (12) Confirmation that all materials necessary for construction will be on hand and ready for use so as not to delay the excavation;
- (13) A transmittal number issued by the Texas Underground Facility Notification Corporation evidencing that the applicant has complied with the Texas Underground Facility Damage Prevention and Safety Act or an assurance that the transmittal number will be provided to the city engineer before the excavation commences;
- (14) Evidence of insurance as required in section 40-147 of this Code;
- (15) Drawings and specifications, as provided in section 40-137 of this Code;
- (16) The work warranty as required by section 40-140 of this Code; and
- (17) The nonrefundable application fee established pursuant to this article.

If the director provides for the filing of applications by electronic means, each application for a permit or permit extension not submitted by electronic means shall also be accompanied by an additional application fee established pursuant to this article for the cost of data entry.

(c) An application for a permit for an excavation performed pursuant to section 40-139 of this Code shall, in addition to the items required above, also include a written statement:

- (1) Explaining the basis for the emergency actions;
- (2) Describing the excavation being performed;
- (3) Describing any work remaining to be performed in the public way; and
- (4) Stating the time and date when the emergency occurred.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 6, 6-7-06)

Sec. 40-137. Drawings to accompany application; exceptions.

(a) Unless otherwise provided in the rules and regulations promulgated under section 40-128 of this Code, each application shall be accompanied by drawings and specifications, which shall show:

- (1) The location of the excavation;
- (2) The method and manner in which the excavation will be performed; and
- (3) The methods by which vehicular and pedestrian traffic will be controlled during the prosecution of the excavation, including any proposed signage, use of flaggers, or use of peace officers to direct traffic.

The drawings and specifications shall be prepared in compliance with all applicable laws, rules, regulations, and construction standards. The director of public works and engineering may approve standard details for frequently encountered types of excavations, and the approved details may be incorporated into drawings and specifications, where applicable.

(b) Consistent with applicable laws, sound engineering practices, and the nature and extent of the excavation, the city engineer may require the drawings and specifications to be sealed by a professional engineer who is licensed in Texas.

(c) An emergency excavation may be commenced under section 40-139 of this Code without submission of drawings and specifications. Consistent with the nature of the emergency and the excavation required, the city engineer shall allow the applicant a reasonable period of time to produce any required drawings and specifications. (Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 01-203, § 3, 2-28-01)

Sec. 40-138. Approval of application; issuance or denial of permit; hearing; validity.

(a) The city engineer shall initially review each application to determine whether it is complete. The city engineer shall return an incomplete application with an explanation of the deficiencies. Consistent with the terms of this article, the city engineer shall approve, approve with conditions, or deny each complete application.

(b) If an application is denied, the city engineer shall notify the applicant of the grounds for denial and of the applicant's right to a hearing under section 40-126 of this Code.

(c) Upon approval of an application, the city engineer shall issue a permit. The permit shall include the following:

- (1) Identity of the excavation that is authorized.
- (2) Name, mailing address, telephone number, and e-mail address of permittee and owner.
- (3) Date of issuance.
- (4) Any special conditions applicable to the permit.
- (5) The number of days from date of entry on the public way to final completion to be allowed for the excavation, which shall be determined pursuant to the rules and regulations promulgated under section 40-128 of this Code, taking into consider-

ation the nature and extent of the excavation and the vehicular and pedestrian use of the public way. Where a permit covers two or more excavations, the number of days for final completion may, consistent with the nature of the work, be separately established for each portion of the work.

- (6) Any additional information deemed necessary for compliance with this article.
- (7) A statement that the permit is issued subject to the terms of this article, the rules and regulations promulgated under section 40-128 of this Code, the construction standards, the approved drawings and specifications, and all other applicable requirements.

(d) A permit shall no longer be valid if there are material changes to the excavation, including but not limited to a change in the scope of the work or the method of performing the work of such consequence that the drawings and specifications no longer accurately depict the work, extending the excavation into any geographical area not included in the permit or an excavation that is not authorized by the original permit. (Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, §§ 7, 8, 6-7-06)

Sec. 40-139. Applicability of article to emergencies.

Nothing contained in this article shall be construed to prevent any person from making an excavation that is necessitated by an emergency, provided that the owner shall: (1) before the excavation is initiated notify the city engineer by telephone at the 24-hour city response telephone number provided in the procedures established under section 40-128 of this Code and also notify any other city, state, or federal authority required under law to be notified; and (2) apply for a permit for the excavation within 24 hours after the initiation of the excavation or, if the city offices are then closed, within 24 hours after the offices of the city are first opened subsequent to the initiation of the excavation. (Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-140. Work warranty.

Each applicant shall execute and provide a work warranty in a form approved by the city attorney, which shall be incorporated into the application form. The purpose of the work warranty is to undertake and ensure that the permittee will:

- (1) Timely perform the excavation in accordance with the permit, the drawings and specifications, all applicable laws, rules, and regulations, and the construction standards adopted in or pursuant to this article, subject to remediation as provided in section 40-159 of this Code; and
- (2) Warrant the excavation following its completion for two years, subject to remediation as provided in section 40-160 of this Code.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 9, 6-7-06)

Sec. 40-141. Permit not transferable; void if excavation not timely commenced.

(a) A permit issued under this division is personal to the permittee and may not be transferred to another person or used by any other person to perform the excavation authorized in the permit.

(b) A permit is valid only for the location(s) described on the application, depicted on the drawings and specifications, and authorized in the permit, and no excavation shall be authorized at any other location without another permit.

(c) Unless sooner extended by the city engineer upon written request and for reasonable cause, a permit shall become void if the excavation is not commenced within 60 days from the date of its issuance.

(Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-142. Record at excavation-site; public notice.

(a) A permittee shall, at all times while an excavation is in progress, keep, at the location of the excavation, the original permit (or a copy

thereof) and shall, immediately on demand, exhibit the permit upon request to the city engineer or any other person.

(b) Each permittee shall post and maintain notices in the vicinity of the excavation in the time, place, and manner prescribed in the rules and regulations promulgated under section 40-128 of this Code. Failure to post and maintain the required notice shall be unlawful.

(c) Such notice required in paragraph (b) above shall include, but not be limited to, the name of the permittee, the permittee's telephone number, and the city permit number.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 10, 6-7-06)

Sec. 40-143. Removal or relocation of facilities.

All permittees who place facilities thereby obligate and bind themselves to move or change the location of facilities whenever required or instructed to do so by the city in order to accommodate the construction, repair, or relocation of city infrastructure facilities, and failure to do so shall be unlawful.

(Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-144. Owner business plans; coordination of excavations.

(a) On or before June 1 of each year, owners shall submit a plan of excavations anticipated to be done in the public way during the five-year period commencing on July 1 of that year. Additionally, the city engineer shall annually solicit a five year transportation improvement plan from the various public way construction entities. As soon as practicable following receipt and compilation of the plans, the city engineer shall make available for inspection a composite list of all projects and transportation improvements designated in the various plans. Applicants are responsible for keeping themselves apprised of the current status of the list. An owner or public way construction entity may change, add, or delete any project in its five year business plan, and if any modification is made, the owner and/or public way construction entity shall notify the city engineer.

(b) Prior to issuance of a permit, the city engineer shall check the application against the composite list. The city engineer may require owners to (i) coordinate their excavations; (ii) coordinate excavations with transportation improvements that are ongoing or are scheduled by public way construction entities; and (iii) complete excavations before transportation improvements commence. The city engineer may grant a waiver of coordination requirements for good cause. The city engineer shall consider the following before granting a waiver:

- (1) Effect of each proposed excavation(s) on the surrounding vicinity and on traffic mobility;
- (2) The applicant's need for the facility;
- (3) The need to facilitate the deployment of new technology as directed pursuant to official city policy; and
- (4) Public health, safety, welfare, and convenience.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 11, 6-7-06)

Sec. 40-145. Newly constructed or reconstructed streets.

(a) Except as provided in subsection (b) below, no permit shall be issued for an excavation in any public way that has been constructed, reconstructed, repaved, or resurfaced in the preceding period of five years, as measured from the date of acceptance by the public works construction entity. Owners shall determine alternative methods of making necessary repairs and facility installations to avoid excavations that are subject to this section.

(b) The city engineer, for good cause, shall grant a variance to an applicant for repair of existing utilities, to respond to emergencies, or to afford an owner the means to provide service to buildings that the owner has no other reasonable means of serving in the determination of the city engineer. Variances shall be granted subject to special conditions that the city engineer determines to be appropriate to the circumstances, such as special coordination with other excavations, special paving requirements, additional soil

compaction test reports, or any other requirements needed to restore the integrity of the public way to "as new" condition. In addition to the information provided on the application, applicant shall provide the following with respect to that part of the public way subject to this provision:

- (1) Reason why the excavation was not performed before or when public way was paved;
 - (2) Reason why the excavation cannot be delayed until after the five-year period expires; and
 - (3) Reason why the excavation cannot be performed at another location or the owner's need cannot be accomplished by a method that does not require excavation.
- (Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-146. Defaults; unauthorized excavations.

(a) The city engineer shall not issue a permit to any person who is in default or breach of any obligation to the city under this article on a prior permit or on a warranty obligation under section 40-159 or 40-160 of this Code.

(b) The director is authorized to debar from obtaining a permit any person who has performed an unpermitted excavation or any owner who has knowingly allowed that practice. Any such debarment shall be for a reasonable period of time that is consistent with the nature and circumstances of the alleged transgressions. Regulations shall be issued for debarment under section 40-128 of this Code.

(c) Before invoking the provisions of this section, the city engineer shall provide a written notice to the affected persons and afford them a right to a hearing under section 40-126 of this Code.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 12, 6-7-06)

Sec. 40-147. Insurance.

(a) As a condition of the issuance of a permit, the applicant shall provide evidence that the applicant holds a current policy of comprehensive

general liability insurance covering the excavation, with an endorsement for any liability assumed under this article and policy limits of not less than \$150,000.00 for property damage, per occurrence, and of not less than \$150,000.00, per person, and \$500,000.00, per occurrence, for bodily injury or death. Each policy shall include a provision obligating the insurer to furnish to the city engineer at least ten days prior written notice of any cancellation.

(b) The failure of the permittee to continuously maintain any required coverage shall cause any permit covered thereby to become invalid. No work may be performed on any excavation at any time when any required proof of insurance coverage is not on file in the city engineer's office. Following notice and an opportunity for a hearing under section 40-126 of this Code, the city engineer shall revoke any permit for which any required proof of insurance is not being maintained.

(c) For joint applications and permits, the coverage required in this section may be provided by a policy jointly covering all of the applicants or by separate proofs of coverage for each applicant or permittee.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 13, 6-7-06)

Sec. 40-148. Extensions.

For good cause not relating to any fault of the permittee in diligently prosecuting the excavation, the city engineer may extend the number of days allowed in the permit pursuant to section 40-138(c)(5) of this Code for completion of the excavation. To obtain an extension, the permittee shall submit an application therefor, including the nonrefundable application fee established pursuant to this article and indicating the number of additional days needed for final completion. Extensions of time granted under this subsection shall be noted on the records regarding the permit.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 14, 6-7-06)

Sec. 40-149. Application fees.

The director shall, from time to time, prepare and submit for approval by motion of the city

council a schedule of nonrefundable application fees that shall be paid by an applicant for a permit, permit extension or data entry. Payment of any applicable fees when due is a condition of the processing of any application under this article.

(Ord. No. 06-594, § 15, 6-7-06)

Secs. 40-150—40-155. Reserved.

**DIVISION 3. PERFORMANCE OF
EXCAVATIONS**

Sec. 40-156. Access to fire hydrants.

Each excavation shall be performed so it does not obstruct emergency access to any fire hydrant or public water supply valve.

(Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-157. Crossings; traffic control devices.

It shall be the duty of each permittee to make provisions for the safe crossing of pedestrians and the orderly movement of vehicular traffic. Provisions therefor shall be included in the drawings and specifications for the excavation. Any required traffic control devices shall conform to applicable laws, the Texas Manual on Uniform Traffic Control Devices, and any rules and regulations promulgated under section 40-128 of this Code.

(Ord. No. 00-1115, § 2, 12-20-00)

Sec. 40-158. Steel plate temporary surfaces.

It shall be unlawful to place a steel plate at an excavation without a permit. The director may authorize as a condition of a permit the use of a steel plate as a temporary surface for an excavation. Any such permit shall specify the length of time the steel plate is allowed to remain in the public way. It shall be unlawful for any permittee or former permittee to maintain or cause to be maintained a steel plate in the public way after the time specified in the permit for the excavation at which the steel plate is located. Each steel plate shall be clearly marked with the name of the

owner of the steel plate, and a permittee's failure to use a steel plate so marked shall be a violation of this article.

(Ord. No. 06-595, § 16, 6-7-06)

Sec. 40-159. Completion of excavation; warranty.

(a) In accordance with the rules and regulations promulgated under section 40-128 of this Code, a permittee shall notify the city engineer before commencing and obtain permission to commence the excavation before it enters into the public way. In connection with the notification and permission, the authorized date of entry on the public way, for purposes of section 40-138(c)(5) of this Code shall be established. In connection with the notification, the permittee shall also furnish the transmittal number required under section 40-136(b)(13) of this Code, if it has not previously been provided. The permittee shall diligently prosecute the excavation to its final completion within the time authorized under the permit. It shall be unlawful for a permittee to fail, refuse or neglect to diligently prosecute or to timely complete the excavation in accordance with the permit and all applicable rules and regulations and the construction standards adopted in or pursuant to this article.

(b) If a permittee commences an excavation and then fails, refuses, or neglects to diligently prosecute or to timely complete the excavation in accordance with the permit and all applicable rules and regulations and the construction standards adopted in or pursuant to this article, the city engineer may, following written notice to the permittee, perform the excavation or cause a city contractor to perform the excavation. The city engineer shall afford the permittee five days' written notice and opportunity to cure before taking over the excavation, unless the director of public works and engineering determines that hazards to public safety and convenience that are posed by the condition of the excavation require a shorter notice period. The city engineer may charge the cost of having the excavation performed, including related administrative expenses, to the permittee. The city engineer shall so notify the permittee, and the permittee shall be obliged to pay the cost within 30 days following receipt of

notification. Disputes over costs assessed shall be subject to the hearing process established under section 40-126 of this Code.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, §§ 16, 17, 6-7-06)

Sec. 40-160. Warranty of excavation; correction of defects.

Each permittee shall warrant its excavations against all defects in workmanship and materials for a period of two years after final completion. Whenever within the one year period any portion of the pavement or surface of any public way excavated under such a warranty is, in the engineering determination of the city engineer, in need of repairs, by reason of any defect in workmanship or materials, the city engineer shall serve upon the permittee a written notice stating the repairs necessary, and requiring the repairs to be made within five days after service of the notice. If the repairs are not timely made, the city engineer shall at once make or cause to the repairs to be made at the expense of the permittee. The expenses, including any related administrative expenses, shall be charged to the permittee, and the permittee shall be obliged to pay the cost within 30 days following receipt of notification. Disputes over costs assessed shall be subject to the hearing process established under section 40-126 of this Code.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 16, 6-7-06)

Sec. 40-161. Inspections of excavations.

(a) All excavations shall be inspected by the city. Based upon the complexity and nature of the excavation and as specified in the permit, inspections may be required during the performance of the excavation, immediately upon completion of the excavation, or both.

(b) Consistent with applicable laws, sound engineering practices, and the nature of the excavation, the city engineer may, in addition to or in lieu of the inspections called for under subsection (a), require that a permittee, at the permittee's expense, retain a professional engineer licensed in Texas to observe the excavation and, based upon the observations, to provide written certifi-

cation upon completion of the excavation stating that the public way has been restored in accordance with the drawings and specifications and all other applicable technical requirements.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 01-203, § 4, 2-28-01; Ord. No. 06-595, §§ 16, 18, 6-7-06)

Sec. 40-162. Damage to facility.

A permittee who, in connection with an excavation, damages another owner's facility shall immediately notify the city engineer and, to the extent that the owner's identity is reasonably determinable, the owner of the damaged facility. (Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 16, 6-7-06)

Sec. 40-163. As-built drawings and specifications.

Upon final completion of an excavation, the permittee shall provide to the city engineer a set of as-built drawings and specifications for the excavation, which shall be in a form provided by the rules and regulations promulgated under section 40-128 of this Code. In the event that the work was performed exactly in accordance with the drawings and specifications provided with the permit application, then the permittee may so advise the city engineer in writing, and the previously supplied drawings and specifications will be regarded as the as-built drawings and specifications.

(Ord. No. 00-1115, § 2, 12-20-00; Ord. No. 06-595, § 16, 6-7-06)

DIVISION 4. RESERVED*

Secs. 40-164—40-167. Reserved.

*Editor's note—Ord. No. 2006-595, § 19, adopted June 7, 2006, repealed Division 4, §§ 40-163—40-167, in their entirety. Formerly said sections pertained to general permits and derived from Ord. No. 00-203, § 5, 2-28-00 and subsequent amendatory ordinances.

ARTICLE VI. TRANSPORTATION OF EARTH MATERIALS ON STREETS AND ALLEYS

DIVISION 1. GENERALLY

Sec. 40-168. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) *Earth materials* shall mean dirt, sand, gravel, shell, clay, and any other materials of a similar nature.
- (2) *Vehicle* shall mean any truck, wagon, trailer, or any other type of vehicle, conveyance, equipment, or machine used to carry, haul, or to transport earth materials.

(Code 1968, § 41-168)

Sec. 40-169. Owner's name and permit number to be displayed on vehicle.

It shall be unlawful for any person to drive, or to permit any agent, employee, subcontractor, or other person under his general supervision or control to drive, any vehicle carrying, hauling, or transporting earth materials on the public streets and alleys of the city, unless the name of the owner of such vehicle and the number of the permit provided for by this article is prominently and legibly displayed on each side of such vehicle.

(Code 1968, § 41-170)

Sec. 40-170. Penalty.

Any person violating any provision of this article shall be fined not less than \$50.00 nor more than \$500.00 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

(Code 1968, § 41-171; Ord. No. 92-1449, § 58, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Secs. 40-171—40-176. Reserved.

DIVISION 2. PERMIT

Sec. 40-177. Required.

(a) It shall be unlawful for any person to drive, or to permit any employee, agent, subcontractor, or other person under his general supervision or control to drive, any vehicle carrying, hauling or transporting earth materials on the public streets and alleys of the city, unless a permit for the carrying, hauling or transporting of such earth materials is first secured by the owner of such vehicle from the city. No person other than the owner of the vehicle shall be required to secure such permit.

(b) The owner of a vehicle shall be required to secure only one permit under this division, regardless of the number of vehicles which he may operate in the city.

(Code 1968, § 41-177)

Sec. 40-178. Issuance; fee.

The director of public works and engineering or his designee ("the director") shall issue a permit for the carrying, hauling or transporting of earth materials to the owner of a vehicle, upon his making a written application and paying a permit fee of \$5.00.

(Code 1968, § 41-178; Ord. No. 90-635, § 118, 5-23-90; Ord. No. 93-514, § 81, 5-5-93)

Cross reference—Refund of permit fees paid to department of public works and engineering, § 2-285.

Sec. 40-179. To be numbered.

Each permit issued under this division shall have a permit number.

(Code 1968, § 41-179)

Sec. 40-180. Term.

A permit issued under this division shall be valid for one year from the date of issuance.

(Code 1968, § 41-180)

Sec. 40-181. Suspension or revocation.

(a) Any permit issued pursuant to the provisions of this division may be subject to suspension for any period of time not to exceed 30 days or to revocation upon the finding pursuant to a public hearing conducted by the director that the permittee or any of his agents or employees has failed to comply with applicable state laws on transportation of loose materials, provided that the holder of such permit shall be given prior notice of date, time and place of the hearing setting forth the grounds upon which the suspension or revocation is based and affording the holder an opportunity to appear in person and/or by counsel, present evidence and cross examine all witnesses appearing at such hearing.

(b) A person may appeal such suspension or revocation to the city council by filling a written notice of appeal with the city secretary within ten days after he receives notice of the suspension or revocation from the director. The city council shall have the power to uphold the suspension or revocation, or to reinstate the permit. When the city council upholds the revocation of a permit, no new permit shall be issued to the person whose permit has been revoked until six months have passed since the date of the revocation.

(Code 1968, § 41-181; Ord. No. 90-635, § 119, 5-23-90)

Secs. 40-182—40-191. Reserved.

**ARTICLE VII. INSPECTION PERMIT FOR
CERTAIN STRUCTURES IN PUBLIC
RIGHT-OF-WAY**

Sec. 40-192. Findings of city council.

The city council hereby finds and determines:

- (1) That the safety, health and welfare of the members of the general public will best be served by requiring periodic inspection, as provided in this article, of all structures, facilities, utility lines and encroachments located within the public streets or right-of-way, including, but not limited to, basements, vaults, tunnels and pipelines; and

- (2) That there are numerous structures, facilities, basements and pipelines that were heretofore constructed, built or placed within the public streets without permission or knowledge on the part of the city, and the owners thereof should be required to pay a reasonable inspection fee to defray the city's expense of inspecting the aforesaid structures and facilities for the purpose of assuring protection of the public safety by lawful compliance with applicable provisions of the Construction Code, as well as to regulate the use of the public streets; therefore

- (3) An initial fee of one-third of one cent per cubic foot, with a minimum of \$1,000.00 for each initial installation, and an annual inspection fee of one-third of one cent per cubic foot, or \$100.00, whichever is greater, based upon the number of cubic feet used or occupied by any of the aforesaid structures or facilities located within the city's public streets shall be paid annually by the permittee as provided by this article, and that such fee is commensurate with and is not in excess of the city's expense involved in administering, supervising, inspecting and regulating the use and maintenance of the aforesaid structures or facilities located within said streets, as well as the city's cost pertaining to the regulation of such public streets because of the abutting owner's occupancy, use, and maintenance of encroachments within the public right-of-way. Subsequent to the issuance of an inspection permit, should the cost to the city of such inspection decrease, the inspection fee shall be reduced correspondingly.

(Code 1968, § 41-192; Ord. No. 72-97, § 1, 1-19-72; Ord. No. 82-972, § 2, 6-15-82; Ord. No. 02-399, § 81, 5-15-02)

Sec. 40-193. Definition.

As used in this article the term "permittee" shall mean any person who submits or files an original or renewal application with the building official, and shall mean any person who is the

holder of an inspection permit provided for in this article or any agent, servant or employee of such person.

(Code 1968, § 41-193; Ord. No. 72-97, § 2, 1-19-72; Ord. No. 90-635, § 120, 5-23-90)

Sec. 40-194. Required; application; revocation.

(a) Any person who owns or leases land which abuts a public street or right-of-way and which abutting land has been improved with any structure, including basements, tunnels, vaults, or facilities, all or a part of which is within the subsurface of the city's right-of-way, shall obtain an inspection permit with regard to the occupancy or maintenance of the aforesaid structures or facilities within any part of the said subsurface of a public street.

(b) Any person who owns or leases land which abuts a public street or right-of-way and who desires to use or occupy any portion of the subsurface of a street by constructing any improvement, structure, basement, or vault within such subsurface area shall obtain an inspection permit therefor.

(c) Any person referred to in subsections (a) and (b) above shall make a written application on a form to be provided by the building official and thereby make a request for an inspection permit with regard to the occupancy or maintenance of the portion of the subsurface area of the right-of-way which abuts the applicant's property. The application shall contain, in addition to other information, the following:

- (1) A map or plat showing the nature and extent of the intended use to be made of any portion of the subsurface of the right-of-way.
- (2) The metes and bounds description of the subsurface area.
- (3) The number of cubic feet contained in the area to be used.

(d) After the approval of the application, the payment of an inspection permit fee, and the issuance of an inspection permit with regard to the occupancy and maintenance of any improvements, structures, basements, tunnels, vaults or

facilities within the city's right-of-way, under the terms and provisions of this article, the building official shall from time to time make inspections of any such structures, improvements, facilities or occupied area. If an inspection reveals that any part of the subsurface structure, improvements, facilities or occupied area within the city's right-of-way does not comply with applicable terms and provisions of the Construction Code and is dangerous or hazardous for human occupancy, the owner or lessee of the structure, improvements or occupied area, shall be notified and required to make such repairs as are necessary in order to comply with the applicable terms and provisions of the Construction Code. If any permittee fails and refuses to allow the building official to come upon or enter the premises of any such structures, improvements, facilities or occupied area for the purpose of making an inspection, he may be prosecuted under the terms of this article, and the building official may revoke the inspection permit for any such occupied area within the city's right-of-way, and such action shall be final, subject to the provisions of paragraph (9) of section 40-197 of this Code.

(Code 1968, § 41-194; Ord. No. 72-97, § 3, 1-19-72; Ord. No. 90-635, §§ 120, 121, 5-23-90; Ord. No. 02-399, § 82, 5-15-02)

Sec. 40-195. Content and conditions of inspection permit.

An inspection permit granted by the city with regard to any part of the city's right-of-way shall be issued pursuant to the terms and provisions of this article, which shall become a part of the inspection permit. The form of inspection permit issued by the building official shall contain a legal description of the property which abuts the city's right-of-way as well as a legal description of the area of the right-of-way proposed to be used and occupied by the permittee; and said inspection permit shall contain an acknowledgement to be made by the applicant, and upon acceptance of the inspection permit, it shall be acknowledged by the applicant.

(Code 1968, § 41-195; Ord. No. 72-97, § 4, 1-19-72; Ord. No. 85-638, § 1, 5-1-85; Ord. No. 90-635, § 122, 5-23-90)

Sec. 40-196. Additional permit conditions when new, remodeling or renovating construction is to be made.

If any person or the owner of land abutting a public street or right-of-way reveals by his application for an inspection permit that any new, remodeling or renovating construction is desired to be made within any part of the city's right-of-way, the requested inspection permit will be issued upon compliance with the terms and provisions of this article, and in addition, upon the following conditions:

- (1) The proposed use of the city's right-of-way by any person or the abutting land owner shall not interfere with the city's lawful use thereof; and no inspection permit will be granted without the approval of the building official.
- (2) The proposed construction within the city's right-of-way shall be under the supervision of and in accordance with plans and specifications approved by the building official.
- (3) At all times during the construction and building of any structure within the city's right-of-way the street or highway shall be kept open for vehicular and pedestrian traffic in a reasonable manner, and no obstruction of the sidewalks shall be permitted in such a way as to prevent the use thereof by pedestrians; dirt and other material removed from the building and construction of any such structure within the city's right-of-way shall not be permitted or allowed to remain on the street or sidewalk, but all such dirt and other materials shall be removed immediately at the sole cost, risk, liability and expense of permittee; all excavations and obstructions of any kind where permitted during the period of permittee's construction, shall be properly barricaded, and well illuminated during the night time, all subject to the approval of the building official.
- (4) After the completion of the construction within the city's right-of-way, the permittee shall at his own cost and expense

replace any sidewalks and surface of any streets that were damaged or removed in the construction of any improvement in a condition equally as good as they were immediately prior to the time of excavation or construction, and all of such sidewalks and streets shall be maintained in a good and useable condition for one year after said sidewalks or streets have been replaced, all subject to the approval of the building official. All damage, if any, to said sidewalks and streets caused by the construction, use, maintenance and operation by permittee shall be repaired by and at the cost and expense of the permittee. In the event permittee fails or refuses to proceed with diligence with the performance of any work in connection with the replacement, rebuilding or resurfacing of streets and sidewalks within 30 days after receiving written notice from the building official, the city may do such work or cause same to be done, all at the sole risk, cost, liability and expense of permittee.

- (5) The permittee, or his successors, assigns or representatives agree, obligate and bind himself or itself to indemnify and does hereby indemnify and hold and save forever harmless the city, from all liability, cost or damage on account of the construction within the city's right-of-way, or on account of using, occupying, preparing, maintaining and operating any such improvements therein. The permittee also agrees to furnish the building official written evidence that he has in full force and effect during all times of the building and construction within the city's right-of-way, public liability insurance in the amount of not less than \$200,000.00 and insurance for property damage in the sum of not less than \$100,000.00 covering such buildings and construction.

(Code 1968, § 41-196; Ord. No. 72-97, § 5, 1-19-72; Ord. No. 90-635, § 120, 5-23-90)

Sec. 40-197. General conditions.

Upon the acceptance of any inspection permit with regard to the occupancy or maintenance of

any part of a public street or right-of-way, including inspection permits for new construction, remodeling or renovating, within the city's right-of-way, the applicant and all persons in privity with him, expressly covenant and agree to comply with the terms and provisions of this article and the following conditions:

- (1) The city shall have the right at any and all times upon 180 days written notice to the permittee, its representatives, successors or assigns, to take possession of and use all or any part of such city right-of-way in the event that such use be desired or needed by the city, as reasonably determined by the city council, for street, sewer, transportation or any other public or municipal use or purpose, and in such event, the city shall have the right to cancel such inspection permit as to that portion of the property or part of the right-of-way so designated and required by the city.
- (2) The permittee shall have the right at any time upon 180 days written notice to the city, to relinquish the use and possession of all or any part of the property or right-of-way covered by the permit as it may so determine and to cancel said inspection permit as to that part so relinquished. In the event that any part of the property or right-of-way which is included and covered by the inspection permit shall be relinquished or diminished, then the cubic footage remaining and continuing to be used by the inspection permittee and thus requiring inspection shall be determined, and the inspection fee shall be calculated on the basis of the new cubic footage.
- (3) Upon the lawful termination of an inspection permit issued hereunder, in whatsoever manner such termination may be made, permittee, assigns, successors and representatives, bind and obligate themselves to restore the city's right-of-way occupied under the provisions of the inspection permit to the original condition as it existed prior to any construction, or to fulfill any other reasonable conditions for the restoration of the right-of-way

which may be acceptable to the city council of the city, and should the permittee, assigns, successors, or representatives fail or refuse to do so within 90 days after such termination then in that event the city may do or have done the work necessary for such purpose at the sole cost, risk, liability and expense of permittee, their assigns, successors and representatives.

- (4) Upon written consent of the city, acting by and through the building official, the permittee may, at his sole cost, risk liability and expense including public liability and property damage insurance in the amounts specified in section 40-196 of this Code, remove, reroute, reconstruct, lower or raise any existing utility lines, public or private sewer lines, water lines, including storm sewers, pipes or conduits presently located within the city's right-of-way, provided that before changing or interfering with any such utility lines as described aforesaid, the permittee shall notify the respective utility companies and the city, owning or operating the aforesaid utility lines, concerning any and all changes, modifications, rerouting of or any interference whatsoever with the aforesaid utility lines, pipes or conduits. Any necessary changes, modifications, rerouting or interference with the aforesaid utility lines, pipes or conduits shall be done under the direction of the representatives of the respective utility companies or the city, as the case may be.
- (5) After the completion of any construction within the city's right-of-way under the terms of an inspection permit granted hereunder, should the city desire to lay or construct its utility lines, including sewer lines, water lines, or any other pipes, or conduits under, across, or along said streets within its right-of-way, any and all additional cost for the laying or construction of the aforesaid utility lines, including pipes and conduits, within said street right-of-way, which may occur by reason of the existence of said construction, shall be paid to the city by the said permittee, his assigns, successors and representatives.
- (6) Solely as between the city and the permittee, and not for the benefit of any other person, the permittee, by acceptance of such inspection permit, hereby waives any claim he, or any heirs, successors or assigns might have for damages for loss of lateral support to any other improvements hereby contemplated which loss of lateral support might be occasioned by any improvements which the city, its assigns, grantees, licensees, or permittees might install or construct.
- (7) The permittee, or his successors, assigns, or representatives, by the acceptance of such inspection permit, agree, obligate and bind himself or itself to indemnify and does hereby indemnify and hold and save forever harmless solely the city, any of its agencies, and any person, from all liability, cost or damage on account of permittee's use, occupancy and maintenance of any part of the city's right-of-way and the structures and improvements therein, including, but not by way of limitation, any basements, tunnels or vaults constructed within the subsurface of any public street or right-of-way. This indemnity shall continue in force and effect during the existence of any inspection permits issued under the provisions of this article.
- (8) No transfer or assignment of any inspection permit granted under the terms and provisions of this article shall be effective unless and until:
 - a. The permittee has, in writing, advised the building official of the name and mailing address of the transferee or assignee; and
 - b. The transferee or assignee has furnished the building official its written agreement to assume and perform all of the duties, covenants and obligations of the inspection permit;

and, thereupon, each provision of the inspection permit shall be binding upon, and inure to the benefit of, the transferee or assignee of the permittee.

- (9) The breach or violation of any one of the terms, provisions, or conditions set forth in this article shall be sufficient to constitute grounds for the cancellation and forfeiture of the inspection permit granted under the authority of this article. Any such cancellation and forfeiture may be exercised upon 20 days written notice by the city to the permittee, a representative or successor, unless, at the expiration of such time, any such violation or breach has ceased or the permittee is proceeding with all diligence and good faith to remedy any such violation or breach and thereafter continues without delay with such remedial work or correction until such violation or breach has been completely remedied, and, any person violating any of the provisions of this article may be prosecuted as provided herein.

(Code 1968, § 41-197; Ord. No. 72-97, § 6, 1-19-72; Ord. No. 80-3227, § 1, 11-20-80; Ord. No. 85-638, § 2, 5-1-85; Ord. No. 90-635, §§ 120, 123, 5-23-90)

Cross reference—Refund of certain permit fees paid to department of public works and engineering, § 2-285.

Sec. 40-198. Intent of article.

It is the intention of the city council by the enactment of this article to lawfully regulate the subsurface use and occupancy of public streets and rights-of-way by persons as defined herein, abutting land owners, and their lessees, and establish an inspection fee, in accordance with the city's general power of control and regulation of public streets and highways as provided by law; however, this article shall not be construed as an assertion by the city of any property rights in derogation of abutting land owner's fee simple title and rights incident thereto, in those cases where the city does not own the fee simple title. (Code 1968, § 41-198; Ord. No. 72-97, § 7, 1-19-72)

Sec. 40-199. Penalty.

Any person who violates any of the provisions of this article shall be guilty of an offense and

upon conviction thereof shall be punished as provided by section 1-6 of this Code. Each and every day that any such violation continues shall constitute a separate offense and shall be punishable as such.

(Code 1968, § 41-199; Ord. No. 72-97, § 8, 1-19-72; Ord. No. 92-1449, § 59, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

Cross references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

State law reference—Penalty for ordinance violations, Vernon's Ann. Civ. St. arts. 1011, 1195.

ARTICLE VIII. BUS SHELTERS

Sec. 40-200. Construction and maintenance of shelters for users of public transportation.

(a) *Permit required.* It shall be lawful for any person owning or leasing real property abutting the public right-of-way (hereinafter referred to as "landholders") or for any person holding a franchise granting the right, privilege and franchise to place advertising materials upon shelters constructed pursuant to a permit issued under this section (hereinafter referred to as "franchisees") or for the Metropolitan Transit Authority (a governmental entity organized and existing under and pursuant to the provisions of Article 1118x, Texas Revised Civil Statutes) to use and occupy a designated area of the public right-of-way as hereinafter stated for the construction and maintenance of a public transportation structure upon obtaining a permit for each such use and occupancy from the director of public works and engineering or his designee (hereinafter referred to as the "director"). All persons seeking such permit shall make a written application on a form provided by the director and thereby make a request for the privilege, license and permission to use, occupy and maintain a designated area of the right-of-way, which area, if the applicant is applying in the capacity of a landholder, must abut the applicant's property. An applicant may request one or more permits in a single application.

(b) *Approval of permits.*

- (1) No permit shall issue for the use or occupancy of the city right-of-way until the director of finance and administration shall certify to the public necessity of such use, occupancy and maintenance for a public transportation structure.
- (2) No permit shall issue for the use or occupancy of the city right-of-way until the director shall certify that such permit will comply with and be consistent with the current city traffic plans and standards.

(c) *Inspection under permit.* After the approval of the application and the issuance of the permit, and the payment of a permit fee of \$10.00, the director shall from time to time make inspections of such transportation structures and occupied areas.

(d) *Revocation of permit.*

- (1) If any inspection of a public transportation structure, improvement, facilities or occupied area under the provisions of this section reveals that the permittee has failed to comply with the terms and provisions of the Construction Code or that the structure is in a dangerous or hazardous condition for human occupancy, the permittee shall be notified by certified mail to make such repairs as are necessary in order to comply with the terms and provisions of the Construction Code within ten days after the receipt of such notice by certified mail. If the permittee fails to make the repairs or to otherwise comply with this section or the Construction Code, the permit will be revoked.
- (2) Upon revocation, the permittee shall have the right to appeal the decision of the director within ten days of the date of such revocation. The decision of the city council on the revocation appeal shall be final. The city shall have the right to remove such public transportation structure from the city right-of-way after the expiration of the ten-day appeal period or

to make whatever arrangements with respect thereto as the city council may desire.

(e) *Terms and conditions of permit.*

- (1) Any permit granted by the city for the use and occupancy of the city right-of-way shall be issued to the applicant upon the following terms and conditions of this section. In the case of franchisees, the permit holder shall also be subject to the terms and conditions of the franchise.
 - a. All permits issued by the department of public works and engineering to an abutting landowner or his lessee shall contain the legal description of the property which abuts the city right-of-way.
 - b. All permits issued under this section must contain a legal description or plat map of the area of the right-of-way to be occupied by the proposed structure.
 - c. Upon acceptance of the permit it shall be acknowledged by the applicant and filed for record by the city in the office of the county clerk.
 - d. The proposed use of the city's right-of-way under a permit shall not interfere with the city's use thereof.
 - e. The proposed construction within the city's right-of-way shall be under the supervision of and in accordance with plans and specifications approved by the director.
 - f. At all times during the construction and building of any structure within the city's right-of-way, the street or highway or other public right-of-way shall be kept open for vehicular and pedestrian traffic in a reasonable manner, and no obstruction of the sidewalks shall be permitted so as to prevent the use thereof by pedestrians for an unreasonable period of time; dirt and other material removed from the building and construction of any such structure within the city's right-of-way shall not be

permitted or allowed to remain on the street or sidewalk and all such dirt and other material removed from the building and construction site shall be at the risk, liability and expense of the permittee; all excavations or obstructions of any kind which are permitted during the period of permittee's construction, shall be properly barricaded, and well-illuminated during the night time, all subject to the approval of the director.

- g. After the completion of the construction within the city's right-of-way, the permittee shall at his own cost and expense replace any sidewalks and surface of any streets that were damaged or removed in the construction of any improvement in a condition equally as good as they were immediately prior to the time of excavation or construction and all of such sidewalks and streets shall be maintained in a good and usable condition for one year after said sidewalks and streets have been replaced, all subject to the approval of the director. All damage, if any, to said sidewalks and streets caused by the construction, use, maintenance and operation by the permittee shall be repaired by and at the cost and expense of the permittee. In the event the permittee fails or refuses to proceed with diligence with the performance of any work in connection with the replacement, rebuilding or resurfacing of streets and sidewalks within 30 days after receiving written notice from the director the city may do such work or cause same to be done all at the sole risk, liability and expense of the permittee.

(f) *Conditions of use and occupancy after construction.* In general, it shall be a condition of such use and occupancy that any structure shall be made available without discrimination at all times to all persons using public transportation.

- (1) Insurance. Permittee agrees that as a condition of such use and occupancy of the

right-of-way that he shall provide written evidence that he has in full force and effect, during such use and occupancy, public liability insurance in the amount of not less than \$300,000.00 per accident for property damage and \$300,000.00 for public liability for accidental bodily injuries or death occurring in relation to or arising out of the permittee's maintenance, occupancy or use of the right-of-way.

- (2) The city shall have the right at any and all times upon 30 days' written notice by certified mail to the permittee, its representatives, successors or assigns to take possession of and use all or any part of such city right-of-way in the event that such use be desired and needed by the city as determined by the city council for street, sewer, transportation or any other public or municipal purpose or use. In such event, the city shall have the right to cancel his license and permit as to the portion of the property or part of the right-of-way so designated and required by the city.
- (3) The permittee shall have the right at any time upon 30 days' written notice to the city to relinquish and give up to the city the use and possession of all or any part of the property or right-of-way described in the permit as it and the city may so cancel the license and permit as to that part so relinquished and given up.
- (4) All privileges, licenses and permits granted hereunder shall, subject to the terms and provisions of this section and unless not otherwise renewed or extended, remain in force and effect for a period not to exceed ten years from and after the issuance of the permit hereunder. Should a franchisee's franchise expire or terminate sooner than said ten years, any permits held by the franchisee shall terminate simultaneously. Upon the termination of the privilege and permit issued hereunder and unless otherwise provided for by any franchise agreement, permittee, assigns, successors and representatives bind and obligate themselves to restore the city's right-of-way occupied under the provisions of the per-

mit to the original condition of such right-of-way as it existed prior to any construction or to fulfill any other condition for the continued existence of the structure or restoration of the right-of-way which may be acceptable to the city council, and should the permittee, assigns, successors or representatives fail or refuse to do so within 30 days after such termination, then, in that event the city may do or have done the work necessary for such purpose at the sole cost, risk and liability and expense of permittee, their assigns, successors and representatives.

- (5) After the completion of any construction within the city's right-of-way under the terms of a permit granted hereunder, should the city desire to lay or construct its utility lines including sewer lines, water lines or any other pipe or conduit under, across or along said street within its right-of-way, any and all additional cost in the laying or construction of the aforesaid utility lines including pipes and conduits within said street right-of-way which may occur by reason of the existence of the construction or occupancy granted to permittee under the terms hereof shall be paid to the city by the said permittee, his assigns, successors and representatives.
- (6) By the acceptance of such permit the permittee, his assigns, successors and representatives agree, obligate and bind himself or itself to indemnify and does hereby indemnify and hold and save forever harmless solely the city, insofar as said city is concerned from all liability, cost or damage on account of the use, occupancy or maintenance of any part of the city's right-of-way and the structures and improvements therein. This indemnity shall continue in force and effect during the existence of any permit or permits issued under the provisions of this section.
- (7) No transfer or assignment of any permit granted under the terms and provisions of this section shall be made without the approval of the city council.

- (8) No permittee shall knowingly cause, permit or allow any advertising materials, posters, billboards, handbills of any nature whatsoever to be posted, distributed or allowed to remain within any structure or upon the premises of the public transportation structure for which such permittee holds authority to use or occupy the city's right-of-way pursuant to this section; provided, however, an incidental use of a structure for advertising purposes by a permittee shall be lawful if the permittee holds a franchise granting such privilege upon such terms and conditions as the city council may impose.

(g) The breach or violation of any one of the terms, provisions or conditions set forth in subsections (e) and (f) hereof shall be sufficient to constitute grounds for the cancellation and forfeiture of the privilege, license and permit granted under the authority of this article. Any such cancellation and forfeiture may be exercised upon 20 days' written notice by the city to the permittee, a representative or successor unless at the expiration of such time any such violation or breach has ceased or the permittee is proceeding with all diligence and good faith to remedy such violation or breach and thereafter continues without delay with such remedial work or correction until such violation or breach has been completely remedied.

(h) It is the intent of the city council by the enactment of this section to regulate the surface, use and occupancy of public rights-of-way by persons as defined herein, specifically those landowners and their lessees abutting the city right-of-way and franchisees in accordance with the city's general power of exclusive dominion, control and regulation of the public streets and highways as provided by law. However, this section shall not be construed as an assertion by the city of any property rights in derogation of the abutting landowner's fee simple title in those cases where the city does not own the fee simple title.

(Code 1968, § 41-200; Ord. No. 72-1850, § 1, 10-11-72; Ord. No. 78-1870, § 1, 9-20-78; Ord. No. 79-1281, §§ 1, 2, 8-7-79; Ord. No. 90-635, § 124, 5-23-90; Ord. No. 93-514, § 82, 5-5-93; Ord. No. 02-399, § 83, 5-15-02)